



April 2, 2018

Mary Becerra
Secretary of the Commission
Indiana Utility Regulatory Commission
101 West Washington Street
Suite 1500 E
Indianapolis, IN 46204

RE: Indianapolis Power & Light Company Thirty Day Administrative Filing (# 50123)

Dear Ms. Becerra,

Indianapolis Power & Light Company ("IPL") hereby responds to the objection filed by the Citizens Action Coalition of Indiana and the Environmental Law & Policy Center (collectively the "Objectors") to IPL's Thirty Day Administrative Filing (the "Filing") for Rate CGS. The Filing has been assigned the tracking number 50123 by the Indiana Utility Regulatory Commission ("Commission"). The Filing was made by IPL to comply with 170 IAC 4-4.1-10 ("Section 10"). Section 10 requires each generating electric utility to annually file updated standard offer rates for the purchase of energy and capacity from a cogeneration facility. The energy and capacity rates must be derived from the appropriate application of 170 IAC 4-4.1-8(a) and 9(c) through 9(d).

The Objectors do not object to the Filing on the basis that the energy and capacity rates are not derived from the appropriate application of Sections 8(a) or 9(c) through 9(d) or otherwise fail to comply with the requirements of Section 10. Instead, the Objectors contend the Filing is "incomplete and violates applicable law" because IPL (a) did not submit a standard contract pursuant to 170 IAC 4-4.1-11 and (b) does not include avoided cost information the Objectors imply must be included in the Filing by 18 CFR § 292.302(b). The Objectors' contentions misconstrue the obligations imposed on IPL. Section 10 does not require IPL to include a standard contract with its annual update to the rates for energy and capacity purchases from a cogeneration facility and no other provisions of the Indiana regulations require such a submission. Neither does Section 10 require IPL to submit rates that comply with 18 C.F.R. § 292.302(b) as part of the Section 10 filing. Consequently, the Filing does not violate applicable law, is not incomplete and there is no permissible basis identified by the Objectors to object to the Filing.

IPL Is Not Required To Submit A Standard Contract

IPL submitted this Filing to comply with Section 10. Objectors do not refer to or cite any provision in Section 10 requiring IPL to submit a standard offer contract when submitting its standard offer rates for purchase of energy and capacity each February 28. Indeed, no provision in Section 10

requires a standard offer contract to be submitted with this annual filing. Since Section 10 does not require a standard contract, no credible objection can be raised to a Section 10 filing on the basis that a standard contract was not included in the filing.

170 IAC 4-4.1-11 (“Section 11”) does require submission of a standard offer contract, but Objectors ignore the specific language of the regulation making clear that a generating electric utility is not required to annually submit a standard offer contract with each filing made under Section 10:

Sec. 11. (a) Within sixty (60) days of the effective date of this rule each generating electric utility shall submit for approval via the commission’s thirty (30) day filing process a standard form contract which it would enter into with a qualifying facility in connection with the generating electric utility’s purchase of energy or capacity or both.

Section 11(a). The submission of these standard offer contracts is a one-time requirement that was required to have been performed within sixty (60) days of the effective date of the rule. IPL complied with this requirement by submitting a copy of its standard form agreement at the time the rule was adopted. Nothing further is required by Sections 10 or 11 with respect to this standard form contract.

The Objectors also state they were unable to locate IPL’s standard contract and that IPL did not provide it upon request. However, the Objectors’ ability to locate the contract has no bearing on the Filing’s compliance with Section 10. Even so, IPL recently provided CAC’s counsel with a copy of the filed agreement. The agreement was provided within ten business days of the request (which request was made two days before the objection was filed). IPL required some time to locate the agreement because no customer has expressed interest in a long-term, fixed rate contract for such purchases at rates other than available under Rate CGS in the recent past and time was required to locate the agreement. Objectors have received what they sought.

The Objectors also contend that “lack of a long-term, fixed rate standard contract has likely discouraged developers from pursuing projects in Indiana,” however they provide no support for this contention, nor is the argument relevant to IPL’s compliance with the thirty day filing rules.

IPL’s Section 10 Filing Need Not Comply With 18 CFR §292.302(b)

Similarly, the Objector’s contention that the Filing, which was made pursuant to Section 10, does not include the avoided cost information required by 18 CFR § 292.302(b) provides no legitimate basis to object to the Filing. IPL was not submitting the Filing to comply with 18 C.F.R. § 292.302(b), but to comply with Section 10. The Objectors do not contend that the Filing fails to comply with Section 10 in any respect. No provision in Section 10 requires a generating electric utility to submit the information required by 18 CFR § 292.302 as part of the annual 30-day filing

required by Section 10. A filing cannot reasonably be held to violate Section 10 or be incomplete because it fails to include information not required by Section 10.

While not relevant to the legitimacy of the Objectors' objections, IPL has complied with many of the requirements of 18 CFR § 292.302(b) through its Integrated Resource Plan ("IRP") which was filed on November 1, 2016. The IRP evaluates IPL's planned capacity additions over at least 10 years and establishes the cost of capacity additions.

The basis for CAC's objection to IPL's Filing is without merit. The Filing is neither incomplete nor in violation of applicable law. For these reasons, IPL believes its Filing should be presented to the Commission for consideration.

**Initiation Of a Statewide Docket To Investigate PURPA Implementation
Is Not Appropriate At This Time**

Objectors' true purpose for their objections appears to be the initiation of a statewide docket to investigate Indiana's implementation of the Public Utilities Regulatory Policy Act ("PURPA"). This is not a legitimate basis for objecting to the Filing, since Section 10 contemplates submission of the energy and capacity rates pursuant to the Commission's 30-day filing procedures to avoid lengthy proceedings considering them.

Apart from Objectors' mis-use of the objection provision of the 30-day filing procedure, now is not the time for Indiana to initiate a statewide docket to investigate PURPA implementation. The very regulations cited by Objectors are being reviewed by the Federal Energy Regulatory Commission ("FERC") in Docket No. AD16-16. *See* Notice Inviting Post-Technical Conference Comments, Docket No. AD16-16 (FERC Sept. 6, 2016).¹ FERC's then Chairman, Neil Chatterjee, has explained the purpose of this investigation:

The energy landscape that existed when PURPA was conceived was fundamentally different than it is today; solar and wind power were fledgling technologies, there was no open access to wholesale electricity markets, and natural gas was in scarce supply. None of those things are true today. In light of such changes, I believe the Commission should consider whether changes in its existing regulations and policies could better align PURPA implementation and modern realities.

Letter from then Chairman Neil Chatterjee to Representative Tim Walberg (Nov. 29, 2017).² Moreover, Congress is considering changes that may be necessary to PURPA. The Energy and Commerce Subcommittees of the House of Representatives held a hearing on September 6, 2017 to hear testimony on the need for revisions to PURPA. *Powering America: Reevaluating PURPA's Objectives and its Effects on Today's Consumers before the H. Energy and Commerce*

¹ Available at <https://www.ferc.gov/CalendarFiles/20160906164926-AD16-16-000%20TC2.pdf>.

² Available at https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14624205.

*S. Comm.*³ Legislation has been introduced in the House of Representatives to modernize PURPA. H.R. 4476, 115th Congress (2015).⁴ Given Congressional and FERC investigations into the need to update PURPA, any inquiry in Indiana, if appropriate, should await the outcome of these other PURPA inquiries because of the significant likelihood any changes would need to be considered by Indiana.

Sincerely,



Andrew J. Wells
Regulatory Counsel
AES US Services, LLC
Indianapolis Power & Light Company

CC: Ms. Jane Steinhauer

³ Available at <https://energycommerce.house.gov/hearings/powering-america-reevaluating-purpas-objectives-effects-todays-consumers/>.

⁴ Available at <https://www.congress.gov/bill/115th-congress/house-bill/4476/text>.